



SAN FRANCISCO PARALEGAL ASSOCIATION

LEGAL ETHICS REVIEW FOR TRUSTS AND ESTATES PARALEGALS CHAPTER V

Who: All of SFPA

What: Trusts and Estates Practice Section

Date and Time: Tuesday, June 16, 2015, Noon to 1:00 PM

Speaker: Vince Avellino, JD, San Francisco State University
Paralegal Studies Program Instructor

Presentation Topic: Legal Ethics Review for Trusts and Estates Paralegals

Cost: No charge to SFPA Members
No charge to SFSU Paralegal Students
\$25.00 to Non-Members, Payable at the Door

Location: San Francisco State University Downtown Campus
835 Market Street, Sixth Floor
San Francisco

1 California MCLE ethics hour will be given.

Reservation Required

Please contact Claude Anyos at claudeanyos@yahoo.com for reservations and questions.

Legal Ethics Review for Trusts and Estates Paralegals

This talk will review the sources of legal ethics in California with an emphasis on the ethical concerns present in trusts and estates practice.

The talk will be given by Vince Avellino a long time SFALA/SFPA member and a graduate (with Honors) of the Paralegal Studies Program at San Francisco State University. Vince also graduated (with Honors) from San Francisco Law School and is licensed to practice in California.

In addition to teaching Legal Ethics, Probate, and Bankruptcy at SFSU, Vince has worked ethically as a Legal Document Assistant, Public Paralegal, Independent Paralegal, Freelance Paralegal, and Freelance Lawyer.

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THE STATE BAR ACT

The State Bar Act refers to the California *Business & Professions Code Div. 3 - Professions and Vocations Generally, Ch. 4 - Attorneys* (Bus. & Prof. Code §§ 6000 et seq.)

State Bar Act ([download PDF](#))

Article Number	Name
ARTICLE 1	GENERAL PROVISIONS (§§ 6000-6009.7) (view section titles)
ARTICLE 2	ADMINISTRATION (§§ 6010-6033) (view section titles)
ARTICLE 2.5	CONFLICTS OF INTEREST (§§ 6035-6038) (view section titles)
ARTICLE 3	COMMITTEES OF THE STATE BAR (§§ 6040-6054) (view section titles)
ARTICLE 4	ADMISSION TO THE PRACTICE OF LAW (§§ 6060-6069) (view section titles)
ARTICLE 4.5	MANDATORY CONTINUING LEGAL EDUCATION (§§ 6070-6071) (view section titles)
ARTICLE 4.7	CONTRACTS FOR LEGAL SERVICES (§§ 6072) (view section titles)
ARTICLE 4.8	PRO BONO SERVICES (§§ 6073) (view section titles)
ARTICLE 5	DISCIPLINARY AUTHORITY OF THE BOARD OF TRUSTEES (§§ 6075-6088) (view section titles)
ARTICLE 5.5	MISCELLANEOUS DISCIPLINARY PROVISIONS (§§ 6090-6095.1) (view section titles)
ARTICLE 6	DISCIPLINARY AUTHORITY OF THE COURTS (§§ 6100-6117) (view section titles)
ARTICLE 7	UNLAWFUL PRACTICE OF LAW (§§ 6125-6133) (view section titles)
ARTICLE 8	REVENUE (§§ 6140-6145) (view section titles)
ARTICLE 8.5	FEE AGREEMENTS (§§ 6146-6149.5) (view section titles)
ARTICLE 9	UNLAWFUL SOLICITATION (§§ 6150-6156) (view section titles)
ARTICLE 9.5	LEGAL ADVERTISING (§§ 6157-6159.2) (view section titles)
ARTICLE 10	LAW CORPORATIONS (§§ 6160-6172) (view section titles)
ARTICLE 10.2	LIMITED LIABILITY PARTNERSHIPS (§§ 6174-6174.5) (view section titles)
ARTICLE 10.5	PROVISIONS OF FINANCIAL SERVICES BY LAWYERS (§§ 6175-6177) (view section titles)
ARTICLE 11	CESSATION OF LAW PRACTICE - JURISDICTION OF COURTS (§§ 6180-6185) (view section titles)
ARTICLE 12	INCAPACITY TO ATTEND TO LAW PRACTICE - JURISDICTION OF COURTS (§§ 6190-6190.6) (view section titles)
ARTICLE 13	ARBITRATION OF ATTORNEYS' FEES (§§ 6200-6206) (view section titles)
ARTICLE 14	FUNDS FOR THE PROVISION OF LEGAL SERVICES TO INDIGENT PERSONS (§§ 6210-6228) (view section titles)
ARTICLE 15	ATTORNEY DIVERSION AND ASSISTANCE ACT (§§ 6230-6238) (view section titles)

CURRENT RULES OF PROFESSIONAL CONDUCT

Rules of Professional Conduct (*download PDF*)

Rules of Professional Conduct (current rules as of **Jan. 1, 2013**). Effective dates of rule additions and amendments made after September 14, 1992, are shown at the end of specific rules.

The current Rules of Professional Conduct are under review by the State Bar. Information concerning the review process and text of the proposed rules can be found at Commission for the Revision of the Rules of Professional Conduct.

Chapter 1. Professional Integrity in General

- Rule 1-100 Rules of Professional Conduct, in General
- Rule 1-110 Disciplinary Authority of the State Bar
- Rule 1-120 Assisting, Soliciting, or Inducing Violations
- Rule 1-200 False Statement Regarding Admission to the State Bar
- Rule 1-300 Unauthorized Practice of Law
- Rule 1-310 Forming a Partnership With a Non-Lawyer
- Rule 1-311 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Member
- Rule 1-320 Financial Arrangements With Non-Lawyers
- Rule 1-400 Advertising and Solicitation
- Rule 1-500 Agreements Restricting a Member's Practice
- Rule 1-600 Legal Service Programs
- Rule 1-650 Limited Legal Services Programs
- Rule 1-700 Member as Candidate for Judicial Office
- Rule 1-710 Member as Temporary Judge, Referee, or Court-Appointed Arbitrator

Chapter 2. Relationship Among Members

- Rule 2-100 Communication With a Represented Party
- Rule 2-200 Financial Arrangements Among Lawyers
- Rule 2-300 Sale or Purchase of a Law Practice of a Member, Living or Deceased
- Rule 2-400 Prohibited Discriminatory Conduct in a Law Practice.

Chapter 3. Professional Relationship With Clients

- Rule 3-100 Confidential Information of a Client

- Rule 3-110 Failing to Act Competently
- Rule 3-120 Sexual Relations With Client
- Rule 3-200 Prohibited Objectives of Employment
- Rule 3-210 Advising the Violation of Law
- Rule 3-300 Avoiding Interests Adverse to a Client
- Rule 3-310 Avoiding the Representation of Adverse Interests
- Rule 3-320 Relationship With Other Party's Lawyer
- Rule 3-400 Limiting Liability to Client
- Rule 3-410 Disclosure of Professional Liability Insurance
- Rule 3-500 Communication
- Rule 3-510 Communication of Settlement Offer
- Rule 3-600 Organization as Client
- Rule 3-700 Termination of Employment

Chapter 4. Financial Relationship With Clients

- Rule 4-100 Preserving Identity of Funds and Property of a Client
- Rule 4-200 Fees for Legal Services
- Rule 4-210 Payment of Personal or Business Expenses Incurred by or for a Client
- Rule 4-300 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review
- Rule 4-400 Gifts From Client

Chapter 5. Advocacy and Representation

- Rule 5-100 Threatening Criminal, Administrative, or Disciplinary Charges
- Rule 5-110 Performing the Duty of Member in Government Service
- Rule 5-120 Trial Publicity
- Rule 5-200 Trial Conduct
- Rule 5-210 Member as Witness
- Rule 5-220 Suppression of Evidence
- Rule 5-300 Contact With Officials
- Rule 5-310 Prohibited Contact With Witnesses
- Rule 5-320 Contact With Jurors

BUSINESS AND PROFESSIONS CODE

SECTION 6450-6456

6450. (a) "Paralegal" means a person who holds himself or herself out to be a paralegal, who is qualified by education, training, or work experience, who either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity, and who performs substantial legal work under the direction and supervision of an active member of the State Bar of California, as defined in Section 6060, or an attorney practicing law in the federal courts of this state, that has been specifically delegated by the attorney to him or her. Tasks performed by a paralegal include, but are not limited to, case planning, development, and management; legal research; interviewing clients; fact gathering and retrieving information; drafting and analyzing legal documents; collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney; and representing clients before a state or federal administrative agency if that representation is permitted by statute, court rule, or administrative rule or regulation.

(b) Notwithstanding subdivision (a), a paralegal shall not do the following:

- (1) Provide legal advice.
- (2) Represent a client in court.
- (3) Select, explain, draft, or recommend the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal.
- (4) Act as a runner or capper, as defined in Sections 6151 and 6152.
- (5) Engage in conduct that constitutes the unlawful practice of law.
- (6) Contract with, or be employed by, a natural person other than an attorney to perform paralegal services.
- (7) In connection with providing paralegal services, induce a person to make an investment, purchase a financial product or service, or enter a transaction from which income or profit, or both, purportedly may be derived.
- (8) Establish the fees to charge a client for the services the paralegal performs, which shall be established by the attorney who supervises the paralegal's work. This paragraph does not apply to fees charged by a paralegal in a contract to provide paralegal services to an attorney, law firm, corporation, governmental agency, or other entity as provided in subdivision (a).

(c) A paralegal shall possess at least one of the following:

- (1) A certificate of completion of a paralegal program approved by the American Bar Association.
- (2) A certificate of completion of a paralegal program at, or a degree from, a postsecondary institution that requires the successful completion of a minimum of 24 semester, or equivalent, units in law-related courses and that has been accredited by a national or regional accrediting organization or approved by the Bureau for Private Postsecondary and Vocational Education.
- (3) A baccalaureate degree or an advanced degree in any subject, a minimum of one year of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has

practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks.

(4) A high school diploma or general equivalency diploma, a minimum of three years of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks. This experience and training shall be completed no later than December 31, 2003.

(d) Every two years, commencing January 1, 2007, any person that is working as a paralegal shall be required to certify completion of four hours of mandatory continuing legal education in legal ethics and four hours of mandatory continuing legal education in either general law or in an area of specialized law. All continuing legal education courses shall meet the requirements of Section 6070. Certification of these continuing education requirements shall be made with the paralegal's supervising attorney. The paralegal shall be responsible for keeping a record of the paralegal's certifications.

(e) A paralegal does not include a nonlawyer who provides legal services directly to members of the public, or a legal document assistant or unlawful detainer assistant as defined in Section 6400, unless the person is a person described in subdivision (a).

(f) This section shall become operative on January 1, 2004.

6451. It is unlawful for a paralegal to perform any services for a consumer except as performed under the direction and supervision of the attorney, law firm, corporation, government agency, or other entity that employs or contracts with the paralegal. Nothing in this chapter shall prohibit a paralegal who is employed by an attorney, law firm, governmental agency, or other entity from providing services to a consumer served by one of these entities if those services are specifically allowed by statute, case law, court rule, or federal or state administrative rule or regulation. "Consumer" means a natural person, firm, association, organization, partnership, business trust, corporation, or public entity.

6452. (a) It is unlawful for a person to identify himself or herself as a paralegal on any advertisement, letterhead, business card or sign, or elsewhere unless he or she has met the qualifications of subdivision (c) of Section 6450 and performs all services under the direction and supervision of an attorney who is an active member of the State Bar of California or an attorney practicing law in the federal courts of this state who is responsible for all of the services performed by the paralegal. The business card of a paralegal shall include the name of the law firm where he or she is employed or a statement that he or she is employed by or contracting with a licensed attorney.

(b) An attorney who uses the services of a paralegal is liable for any harm caused as the result of the paralegal's negligence, misconduct, or violation of this chapter.

6453. A paralegal is subject to the same duty as an attorney specified in subdivision (e) of Section 6068 to maintain inviolate the confidentiality, and at every peril to himself or herself to preserve the attorney-client privilege, of a consumer for whom the paralegal has provided any of the services described in subdivision (a) of Section 6450.

6454. The terms "paralegal," "legal assistant," "attorney assistant," "freelance paralegal," "independent paralegal," and "contract paralegal" are synonymous for purposes of this chapter.

6455. (a) Any consumer injured by a violation of this chapter may file a complaint and seek redress in superior court for injunctive relief, restitution, and damages. Attorney's fees shall be awarded in this action to the prevailing plaintiff.

(b) Any person who violates the provisions of Section 6451 or 6452 is guilty of an infraction for the first violation, which is punishable upon conviction by a fine of up to two thousand five hundred dollars (\$2,500) as to each consumer with respect to whom a violation occurs, and is guilty of a misdemeanor for the second and each subsequent violation, which is punishable upon conviction by a fine of two thousand five hundred dollars (\$2,500) as to each consumer with respect to whom a violation occurs, or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. Any person convicted of a violation of this section shall be ordered by the court to pay restitution to the victim pursuant to Section 1202.4 of the Penal Code.

6456. An individual employed by the state as a paralegal, legal assistant, legal analyst, or similar title, is exempt from the provisions of this chapter.

PARALEGAL MCLE TRACKING CHART

California Business & Professions Code Section 6450(d):

Every two years, commencing January 1, 2007, any person that is working as a paralegal shall be required to certify completion of four hours of mandatory continuing legal education in legal ethics and four hours of mandatory continuing legal education in either general law or in an area of specialized law. All continuing legal education courses shall meet the requirements of Section 6070.

Certification of these continuing education requirements shall be made with the paralegal's supervising attorney. The paralegal shall be responsible for keeping a record of the paralegal's certifications.

Date	MCLE Course Description	No. of Hours
General Law/Specialized Area of Law (minimum 4 hours required)		
Compliance Period:		
Legal Ethics (minimum 4 hours required)		
Compliance Period:		
Total:		

I, _____, hereby certify to _____, my supervising attorney, that I have completed the MCLE requirements in legal ethics and general/specialized law as mandated by Business and Professions Code Section 6450, et seq., for the period specified above.

Dated: _____

Signature: _____

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STRENGTH THROUGH STATEWIDE ALLIANCE



(e) Use of paralegals in the performance of extraordinary services

Extraordinary legal services may include the services of a paralegal as defined in Business and Professions Code section 6450(a) only if the request for extraordinary legal fees for the paralegal's services:

- (1) Describes the qualifications of the paralegal (including education, certification, continuing education, and experience). The description must state that the paralegal:
 - (A) Acted under the direction and supervision of an attorney;
 - (B) Satisfies one or more of the minimum qualifications specified in Business and Professions Code section 6450(c); and
 - (C) Has completed mandatory continuing education required by Business and Professions Code section 6450(d) for the last two-year certification period ending before the year during which any part of the paralegal's services were performed.
- (2) States the hours spent by the paralegal and the hourly rate requested for the paralegal's services;
- (3) Describes the services performed by the paralegal;
- (4) States why it was appropriate to use the paralegal's services in the particular case; and
- (5) Demonstrates that the total amount requested for the extraordinary services of the attorney and the paralegal does not exceed the amount appropriate if the attorney had performed the services without the paralegal's assistance.

Legal Ethics Review

San Francisco State University

Paralegal Studies Program

Continuing Education

This four-hour continuing education seminar will begin a review of the full scope of legal ethics, which includes:

- The regulation of legal service providers in California,
- The unauthorized practice of law,
- Confidentiality and conflicts of interest,
- Competency, advocacy, and professionalism.

This seminar is designed for all persons working in the "Legal Field": Paralegals, Lawyers, Legal Document Assistants, and others. New ethics rules continue to develop for these workers and they must have a clear understanding of legal ethics - the concepts and rules that guide them in their work. Legal workers need to be alert to potential ethical dilemmas, to develop a framework for ethical decision-making, and to be aware of changes in ethics rules as they develop.

This seminar qualifies for four hours of continuing education in ethics for paralegals as required by Business and Professions Code section 6450(d). This seminar also qualifies for four hours of MCLE in ethics for lawyers as required by the State Bar of California.

Vince Avellino, J.D., teaches "Communication Skills And Legal Ethics" in the Paralegal Studies program at San Francisco State University. He has worked ethically in the legal field as a legal document assistant, an independent paralegal, a freelance paralegal, and an attorney.